



*WC 07-215*  
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September 11, 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington D.C. 20554

**FILED/ACCEPTED**  
**SEP 11 2007**  
Federal Communications Commission  
Office of the Secretary

**Re: Petition of AT&T Inc. under 47 USC 160(c) for Conditional Forbearance from  
Enforcing 47 U.S.C. 228(b)(5) and 47 CFR 64.1506**

Dear Ms. Dortch:

Pursuant to the Commission's rules, attached please find the redacted version of AT&T's above reference filing for inclusion on the record.

If you have questions, please call me on 202-457-3050.

Sincerely,

Davida Grant  
Senior Attorney  
AT&T Services, Inc.

Attachment

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Petition of AT&T Inc. )  
For Conditional Forbearance from )  
Enforcing 47 U.S.C. 228(b)(5) and )  
47 CFR 64.1506 )

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PETITION OF AT&T INC.  
FOR FORBEARANCE FROM SECTION 228(b)(5) AND 47 CFR 64.1506

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September 11, 2007

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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Petition of AT&T Inc. )  
for Conditional Forbearance from )  
Enforcing 47 U.S.C. 228(b)(5) and )  
47 CFR 64.1506 )

**PETITION OF AT&T INC.  
FOR FORBEARANCE FROM SECTION 228(b)(5) AND 47 CFR 64.15506**

**INTRODUCTION AND SUMMARY**

AT&T, Inc. ("AT&T"), on behalf of its operating telephone companies,<sup>1</sup> hereby requests that the Commission grant AT&T conditional forbearance from Section 228(b)(5) of the Communications Act of 1934, as amended, and Section 64.1506 of the Commission's rules to the extent those provisions together require that telecommunications carriers offer interstate pay-per-call services only through telephone numbers beginning with a 900 access code. AT&T seeks such forbearance so that it can offer a new enhanced directory assistance service to its wireline customers via an alternative dialing sequence, \*ATT (\*288).

As discussed below, the limited forbearance requested herein fully meets the three-pronged statutory test for forbearance. First, use of a 900 access code in this circumstance is unnecessary to ensure that the charges, practices, and classifications that

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<sup>1</sup> BellSouth Telecommunications, Inc. d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Ohio Bell Telephone Company d/b/a AT&T Ohio, Wisconsin Telephone Company d/b/a AT&T Wisconsin, Nevada Bell Telephone Company d/b/a AT&T Nevada, Pacific Bell Telephone Company d/b/a AT&T California, Southern New England Telephone Company d/b/a AT&T Connecticut; and Southwestern Bell Telephone L.P. d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas.

apply to \*ATT service are just and reasonable and not unreasonably discriminatory. The numerous competitive alternatives available to consumers for DA service functionality, coupled with the fact that the advertisements and marketing materials that will inform consumers of the availability of \*ATT service will disclose that charges apply to this service, will ensure that those goals are fully met. Likewise, use of a 900 access code is unnecessary to protect consumers. The purpose of requiring that pay-per-call services be provided via 900 access codes is to ensure that consumers do not mistake pay-per-call telephone numbers for ordinary telephone numbers and thereby unwittingly incur pay-per-call charges. No consumer could reasonably confuse \*ATT with an ordinary "free" telephone number; indeed, other services that are accessed via an access code that begins with a \* involve per-call charges. Moreover, as noted, the materials that will inform consumers of the existence of this service will likewise inform them that charges apply. Finally, grant of conditional forbearance is in the public interest. By enabling AT&T to provide \*ATT service, the Commission would be making available to consumers a new, convenient, easy-to-remember dialing sequence that they can use to obtain directory assistance services and a host of other useful information.

#### **BACKGROUND**

Section 228(b)(5) of the Communications Act of 1934, as amended, mandates that the Commission adopt rules that require providers of interstate pay-per-call services to offer such services exclusively through certain prefixes or area codes.<sup>2</sup> Following that directive, the Commission adopted Section 64.1506, which requires all interstate pay-per-call services to be offered through 900 numbers, except in limited circumstances not

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<sup>2</sup> 47 U.S.C. §228(b)(5).

applicable here.<sup>3</sup> The purpose of this statute and the Commission's implementing rule is to help ensure that consumers are aware of when they were using services that carry charges beyond normal telephone rates.<sup>4</sup>

AT&T seeks forbearance from section 228(b)(5) and section 64.1506 so that it may offer a pay-per-call service – specifically an enhanced directory assistance (“DA”) service (hereinafter “\*ATT Services”) — to its wireline customers that they can access by dialing \*ATT (\*288), rather than a 900 number, on telephone sets presubscribed to AT&T. This new product will offer customers a wealth of information options, including, local, national and reverse DA, business category searches, and information pertaining to business and finance, entertainment, movies, news, sports, weather, local events, traffic conditions, and stocks.<sup>5</sup>

Specifically, when an AT&T wireline customer dials \*ATT on a telephone presubscribed to AT&T, the customer will be connected to a platform that will offer the customer a menu of service options and prompt the customer to select a service from that menu. After selection, the automated system will provide the caller the requested information, or provide the caller another menu with a subset of services related to the general service selected. For example, a \*ATT caller interested in DA services could select DA services from the main menu and provide the city and state for the listing along

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<sup>3</sup> Providers that offer pay-per-call services pursuant to written presubscription agreements are permitted to use other access codes. See 47 C.F.R. 1501(a)(4) and 64.1506.

<sup>4</sup> *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Report and Order*, 8 FCC Rcd 6885, 6893 (1993) (“Pay-per-Call Order”).

<sup>5</sup> In the future, AT&T may provide information pertaining to legal, dental, health, scientific, educational, instructional, technical, professional, trade, or other like or similar matters.

with the name of the individual or business – the same information customers currently provide for 411 DA services. An \*ATT caller interested in sports information could select such information from the main menu, and then would be prompted to make further selections, such as for local versus national scores or for scores or information pertaining to a particular sport. Callers who have chosen an option will subsequently have the option of returning to the main menu to choose additional services. While \*ATT Services will be automated, live operator support will be available.

\*ATT Services users will have the option of being billed for the service on a per use basis, or subscribing to the service for a monthly fee. Pay-per use customers will be charged a flat fee, ranging between \$1.50 and \$1.79 – the same rates AT&T charges for its state-tariffed 411 DA services.

AT&T will use a variety of media to advertise this service, including newspapers, direct mailings, bill inserts, Internet, radio and television advertising. While the exact advertising has not been finalized, all advertisements will clearly disclose that charges apply for the use of the service. Further, prior to initiation of the service, AT&T will send all of its wireline customers a bill message that clearly and conspicuously describes the service, as well as the specific per use and monthly subscription charges for the service.

Apart from the dialing sequence that may be used to access these services, AT&T will comply with all other requirements applicable to interstate pay-per-call services. Specifically, AT&T will provide AT&T users the ability to block \*ATT Services and will comply with all billing and information disclosure requirements set forth in Sections 64.1509 and 64.1510.

## DISCUSSION

### I. FORBEARANCE UNDER SECTION 10

This Petition must be granted if the “three prongs” of the forbearance statute, 47 U.S.C. § 160 (a), are satisfied:

the statutory test for forbearance under [Section 160 (a)] has three prongs that must all be satisfied before the Commission is *obligated* to forbear from enforcing a regulation or a statutory provision: (1) ‘enforcement . . . is not necessary to ensure that the charges . . . are just and reasonable and are not unjustly or unreasonably discriminatory’; (2) ‘enforcement . . . is not necessary for the protection of consumers’; and (3) ‘forbearance . . . is consistent with the public interest.’<sup>6</sup>

If it is shown that the rules at issue are not necessary for ratemaking and are not necessary for protecting consumers, and, that granting forbearance is consistent with the public interest, the Commission *must* grant forbearance.

In the context of forbearance, regulatory requirements should not be deemed “necessary” unless there is a “*strong connection* between what the [Commission] has done by way of regulation and what the agency *permissibly sought to achieve* with the disputed regulation.”<sup>7</sup> If the rules do not demonstrably achieve the “permissible” regulatory aims, or if the aims no longer exist, no “strong connection” exists. And, of course, when continued enforcement actually produces *negative* results, then an entirely impermissible *negative* “connection” is revealed. In either case, consistent with the

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<sup>6</sup> CTIA, 330 F.3d at 509 (emphasis added). See *In the Matter of Petition for Forbearance from E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers Under Rule Section 20.18 (H), Order*, WT Docket No. 02-377, 18 F.C.C. Rcd 24648, 24653 (2003).

<sup>7</sup> CTIA, 330 F.3d at 512 (emphases added). See also *Petition for Forbearance from E911 Accuracy Standards*, 18 FCC Rcd at 24644 (“... in this context, a requirement is ‘necessary’ for the protection of consumers if there is a strong connection between the requirement and the goal of consumer protection”).



public interest, forbearance must be granted. Thus, unless there continues to be a “strong connection” between enforcement of Section 228(b)(5) of the Act and Section 64.1506 of the Commission’s rules under the circumstances presented and just, reasonable and nondiscriminatory AT&T rates, protection of consumers, and the public interest, AT&T’s Petition cannot be denied.

As shown below, there is no such “strong connection;” indeed, there is no connection at all. No public purpose would be served by denying AT&T the ability to offer its enhanced DA service through the \*ATT dialing sequence. The only effect of such a requirement would be to deny consumers a particularly convenient and easy-to-remember way of accessing this service.

**A. Required Use Of The 900 Access Code Is Not Necessary For The Protection Of Consumers.**

For ease of analysis, we begin with the second prong, which is most germane. Under that prong, the Commission must determine whether enforcement of the 900 access code requirement under the circumstances presented is necessary to protect consumers. It is not.

The purpose of the pay-per-call regulations is to ensure that consumers do not access, and incur charges for, pay-per-call services under the mistaken impression that they are free services. To that end, Congress directed the Commission to require that such services be offered “only through the use of certain telephone number prefixes and area codes.”<sup>8</sup> Congress did not, however, conclude that the only prefix or area code that should be used for pay-per-call services was the 900 access code. It simply wanted to ensure that, whatever dialing sequences were available for such services, consumers

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<sup>8</sup> 47 U.S.C. sec. 228(b)(5).

would not confuse those sequences with those used for ordinary free calls. In implementing section 228(b)(5), the Commission was presented with various access codes that were being used to provide pay-per-call services at the time. The Commission noted that, while “[a] substantial number of telephone subscribers are probably aware that services offered through 900 numbers carry charges beyond those assessed for transmission of ordinary long distance calls, [s]ubscribers are much less likely to associate other number sequences with the increased charges applicable to pay-per-call programs.”<sup>9</sup> For this reason, the Commission chose the 900 access code as the single access code that could be used for pay-per-call services.<sup>10</sup> Notably, however, the Commission held that “[i]f the technology develops to the point where abbreviated dialing sequences are feasible for interstate use, we could reassess our current determination that all interstate pay-per-call services should be restricted to the 900 access code.”<sup>11</sup>

AT&T now is able offer an interstate pay-per-call service through an abbreviated dialing sequence — \*ATT. Allowing AT&T to offer its service through that dialing sequence would in no way result in consumer confusion or otherwise undermine the consumer protection goals of section 228(b)(5).

First, the advertising and marketing materials that will inform consumers of the existence of this service likewise will inform consumers that \*ATT Services carries a per-use charge. Further, AT&T will clearly and conspicuously disclose the specific per-

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<sup>9</sup> *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Report and Order*, Notice of Proposed Rulemaking, 8 FCC Rcd 2335, ¶ 17 (1993).

<sup>10</sup> *Pay-per-Call Order*, at 6893.

<sup>11</sup> *Id.*, n.83.

use charge and monthly subscription charges in bill messages sent directly to its wireline customers. Accordingly, AT&T customers will be fully informed that they will pay additional charges to use \*ATT Services. There is, moreover, almost no risk that consumers will reach the service through misdialing because they have to dial a four digit abbreviated code (\*288), not a three-digit, seven-digit or ten-digit number, which consumers must dial today to reach a called party or service.<sup>12</sup>

Second, consumers already have reason to associate dialing sequences that begin with an “\*” as services that carry additional charges. AT&T for example offers its wireline customers a la carte services such as call return and repeat dialing, which they access by dialing \*69 and \*66, respectively, and pay for on a per use basis. A number of AT&T customers avail themselves of these offerings. Call return (\*69), for example, was used by AT&T West, AT&T Midwest, and AT&T Southwest wireline customers a combined total of (redacted) times in April 2007, (redacted) times in May 2007 and (redacted) times in June 2007. Auto-Redial (\*66) was used a combined total of (redacted) times during the same period in the same AT&T regions. Given the widespread use of these services by AT&T customers, it is reasonable to conclude that they generally associate dialing sequences that begin with a “\*” with services that carry additional charges.

As additional protection against unwanted pay-per-call charges, AT&T customers will have the ability to block access to \*ATT Services, if they so choose, as required under Section 64.1508. Further, AT&T will provide its customers the information

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<sup>12</sup> In the highly unlikely event that a customer inadvertently dialed the service, they could obtain a refund by contacting a customer service representative.

disclosures required under Section 64.1509 and will comply with all billing requirements imposed under Section 64.1510.

**B. Required Use Of The 900 Access Code For AT&T's Enhanced DA Offering Is Not Necessary To Ensure That The Applicable Rates, Regulations, Classifications And Practices Are Just, Reasonable, And Not Unreasonably Discriminatory.**

Continued enforcement of the 900 access code restriction also is unnecessary to ensure that the rates, regulations, practices and classifications for \*ATT Services are just, reasonable and not unreasonably discriminatory. Customers face a plethora of choices for obtaining the information that AT&T will provide via \*ATT Services, including the Internet, radio, television, newspapers, numerous providers of yellow and white page listings, and other services provided by telecommunications services and information service providers. Regardless of whether customers access AT&T's service via \*ATT or a 900 access code, they will not use the service if the rates, terms, and conditions, on which it is offered are not just and reasonable. And because, for the reasons outlined above, consumers using this service will be well aware that there are charges associated with the service, no conceivable argument could be made that allowing AT&T to offer this service through the \*ATT dialing sequence would somehow enable AT&T to charge unjust or unreasonable rates or engage in unreasonable discrimination.<sup>13</sup>

**C. Granting Conditional Forbearance from required use of the 900 Access Code is Consistent with the Public Interest.**

Finally, a grant of conditional forbearance to allow AT&T to offer its enhanced DA service via the \*ATT code is in the public interest. Not only would forbearance promote competitive market conditions, but it would also enable customers to obtain

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<sup>13</sup> AT&T may charge different rates for business and consumer customers.

access to the wealth of information available through \*ATT via a simple and easy-to-remember telephone number.

In deciding whether forbearance is in the public interest under Section 10(a)(3), the Commission is required to “consider whether forbearance from enforcing the provision of the regulation will promote competitive market conditions.”<sup>14</sup> If the Commission concludes that forbearance will promote competitive market conditions, that finding may be a basis for determining that forbearance is in the public interest.

A grant of conditional forbearance here would promote competitive market conditions by providing consumers with an additional, attractive option for obtaining DA and other information. This information is available from numerous sources today, including, but not limited to, traditional DA services, phone books, online versions of yellow and white pages, other websites that provide DA listings, and, of course, an incredibly rich variety of information sources for news, sports, weather, etc.<sup>15</sup> Indeed, the leading wireless carriers already offer their own enhanced DA services using the 411 number. Giving customers an additional way of obtaining such information will only heighten the competition that already exists among the many providers of such information. For this reason, alone, forbearance is in the public interest.

But wholly apart from increasing competition in the provision of DA and other information, forbearance will further the public interest by enabling consumers to access such information through a simple, easy-to-remember, 4-digit dialing sequence. As noted, consumers may access enhanced DA services on the leading wireless networks by

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<sup>14</sup> 47 U.S.C. § (10)(b).

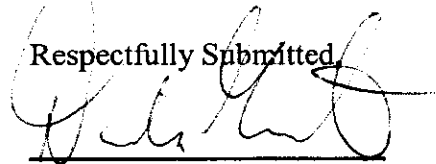
<sup>15</sup> A partial list of some of the providers that offer some or all of these services through a telephone number is set forth in Exhibit 1.

dialing three digits – 411. Giving consumers similarly convenient and easy-to-remember options that they can use, if they so choose, on their wireline phones is in the public interest.

#### CONCLUSION

For the foregoing reasons, the Commission should grant AT&T's Petition seeking conditional forbearance from Section 228(b)(5) of the Act and Section 64.1506 of the Commission's rules to allow AT&T to offer its enhanced DA service via \*ATT. AT&T's Petition satisfies the forbearance criteria because enforcement of the requirement that pay-per-call services be offered through a 900 access code is not necessary to ensure that the rates, terms, and conditions on which AT&T offers its enhanced DA service are just, reasonable, and not unreasonably nondiscriminatory or to protect consumers. Moreover, forbearance would further the public interest. Accordingly, the Commission should expeditiously grant this petition. *See* 47 U.S.C. §§ 160(a) and (c).

Respectfully Submitted,



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September 11, 2007

## Exhibit 1

Company Name	Number	DA Service	Information Services	Pricing	Misc.
Tellme	1-800-555-8355	Yes	Business Search, Stock quotes, News Center, Ringtones, Sports, Entertainment, Travel, Weather, Taxi, Driving Directions, Time, Lottery, Horoscopes, Airlines, Movies, Soap Operas	Free	
In A City	1-800-462-2489	Yes	Hotel reservations, Visitor Information, Taxis, Limos, Rental cars, Event tickets, Movies, Airlines, Travel agents, Pizza delivery, Send flowers, Post Offices, FedEx, and Amtrak	Free	
Jingle Networks	1-800-373-3411	Yes	Business Category Search	Free	
Verizon	1-800-843-4636	Yes	Business Category Search	Free	May expand to include info services
411SAVE	1-800-411-7283	Yes		Free*	*Free if automated. Premium/operator service \$.49/call. Have to provide credit card # if sign-up for the Premium Svc.
Google	1-800-466-4411	Yes	Business Category Search, SMS/Text back available to wireless customers	Free	
Dial Directions	(347) 328-4667	No	Directions to any address or store destination. Customers can ask for the closest location of any chain store, like Starbucks or Borders	Free	Currently in beta testing in San Francisco, Los Angeles, and New York city
AT&T	1-800-935-5697	Yes	Business Category Search	Free	

Company Name	Number	DA Service	Information Services	Pricing	Misc.
1800KnowNow	1-800-566-9669	Yes	You can ask the operator, "expert" anything	\$1.00/call + \$.10/min	Charges are billed to a customer's credit card
VOOM (411)	(612) 866-6411	Yes	Local events, Restaurants, Where to Buy, Business Information, Movies, Driving Directions, Traffic, and Weather	\$.99/min	Charges are billed to a customer's credit card. Currently in a test phase in the Twin Cities, Minnesota
AT&T Mobility	411	Yes	Movies, Driving Directions, Business Category Search	\$1.79/call	
T-Mobile	411	Yes	Movies, Weather, Horoscopes, Sports Scores, Restaurant listings, and Stock Quotes	\$1.49/call	
Sprint/Nextel	411	Yes	Restaurant Reservations, Driving Directions, Movie Listings, Local Event Info, Sports Scores, Weather, Stock Quotes, Horoscopes, Winning Lottery Numbers, Time of Day, ATM Locations, Business Category Search	\$1.79/call	
Verizon Wireless	411	Yes	Business Category Search, Movie Listings, Restaurant Listings, Sports Scores, Local Event Info, Stock Quotes, Weather, and Horoscopes	\$1.49/call	
US Cellular	411	Yes	Movie Listings, Restaurant Listings	\$1.50/call	
ALLTEL Wireless	411	Yes	Movie Listings and more	\$1.50/call	
Vonage	411	Yes	Movie Listings, Airline flight times, ATM locations, Weather, Sports Scores and News, Stock Quotes, Lottery Results, Time of Day, Horoscopes, and Business Category Search	\$.99/call	





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Washington D.C., September 11, 2007

Christi Shewman  
Chief, Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S. W.  
Washington, DC 20554

Dear Ms. Shewman:

**Re: AT&T Petition for Forbearance from Section 228(b)(5) of the Communications Act of 1934, as amended, and 47 CFR Section 1506 of the Commission's Rules**

Pursuant to the Commission's decision in Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55 (FCC 98-184), released Aug. 4, 1998 ("Confidential Information Order") and in accordance with the Commission's rules related to the Freedom of Information Act, 47 C.F.R. §§ 0.457 and 0.459, AT&T Inc. ("AT&T"), on behalf of its wholly-owned subsidiaries, requests confidential treatment of the redacted information contained in AT&T's Petition for Forbearance, referenced above, filed September 11, 2007.

**Statement pursuant to 47 C.F.R. § 0.459(b)**

**(1) Identification of the specific information for which confidential treatment is sought.**

AT&T requests that the Commission not disclose the information redacted in its Petition, which discloses information relating to the number of AT&T customers that use certain call-related features of AT&T services.

**(2) Identification of the Commission proceedings in which the information was submitted or a description of the circumstances giving rise to the submission.**

AT&T is contemporaneously filing a Petition for Forbearance of Section 228(b)(5) of the Act and 47 CFR § 64.1506 of the Commission's rules to allow AT&T to offer an enhanced directory assistance product through the code, \*ATT, rather than a 900 number.

**(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.**

The data provided by AT&T discloses the number of AT&T customers that use or have recently used certain call-related features of AT&T's services. Disclosure of such information

would provide competitors information regarding AT&T customer demand for those services. It is, therefore, sensitive competitive information.

**(4) Explanation of the degree to which the information concerns a service that is subject to competition.**

AT&T's services are subject to significant competition throughout its region. AT&T competitors' knowledge of how many customers actually use certain AT&T service features could enable them to use such information to offer competing features or to enhance their offerings, which arguably could lure such customers from AT&T.

**(5) Explanation of how disclosure of the information could result in substantial competitive harm.**

The number of customers that purchase or use specific AT&T services is competitively sensitive information. Carriers distinguish themselves based on the mix of services they make available. AT&T's competitors could use the confidential and proprietary customer information to assist them in determining the mix of services they should offer their customers, which could enhance their competitive positions to the detriment of the competitive position of the AT&T Companies.

The protective procedures established by the Commission and other governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has provided the assurances that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."<sup>1</sup>

**(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.**

This up-to-date information has been maintained on a confidential basis and would not ordinarily be disclosed to parties outside the company.

**(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

This information has been maintained on a confidential basis and would not ordinarily be disclosed to parties outside the company.

**(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.**

The material should be withheld from public disclosure as long as the data in question would provide a basis for competitors to gain insight into the purchasing practices of AT&T's customers. AT&T cannot determine when this information would become "stale" for such a purpose.

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<sup>1</sup> Confidential Information Order at ¶ 8.

**(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.**

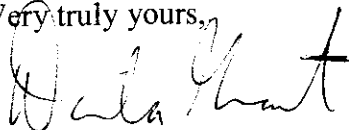
Under applicable Commission and Court rulings, the subject material must be kept free from public disclosure. Exemption 4 of the Freedom of Information Act shields information which is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. See Washington Post Co. v. U.S. Department of Health and Human Services, 690 F. 2d 252 (D.C. Cir. 1982). The attached information clearly satisfies the first two elements of that test. With respect to the third element of the above test, information is considered to be "confidential" if disclosure is likely to (1) impair the government's ability to obtain necessary information in the future, or (2) harm substantially the competitive position of the person from which the information was obtained. National Parks and Conservation Ass'n. v. Morton, 498 F. 2d 765, 770 (D.C. Cir. 1974).

The Commission has specifically held that disclosure of data gathered by the Commission under its audit authority would be likely to impair the government's future ability to obtain such data, notwithstanding the statutory authority to compel production. See In the Matter of Martha H. Platt on Request for Inspection of Records, FOIA Control Nos. 90-63 (October 3, 1990).

The Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market strategies, and customer identities. See In re Pan American Satellite Corporation, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).<sup>2</sup>

Should you have any questions please contact me on (202) 457-3045. My office address is 1120 20<sup>th</sup> Street, NW, 10<sup>th</sup> Floor, Washington, DC 20005. Thank you for your attention to this matter.

Very truly yours,



Davida Grant  
Senior Attorney

Attachments

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<sup>2</sup> Further, the Commission has ruled that not only should such data be protected but also that information must be protected through which the competitively sensitive information can be determined. Allnet Communications Services, Inc. Freedom of Information Act Request, FOIA Control No. 92-149, Memorandum Opinion and Order (released August 17, 1993) at p. 3. The Commission's decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. Allnet Communications Services, Inc. v. FCC, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).